

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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LARRY PORTER,  
Plaintiff,

v. 04-cv-988  
(TJM/DRH)

CRAIG GUMMERSON; S. YORKEY; and  
KAREN QUINN, Registered Nurse

Defendants.

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THOMAS J. McAVOY  
Senior United States District Judge

**DECISION and ORDER**

Plaintiff Larry Porter, appearing pro se, brings this action pursuant to 42 U.S.C. § 1983. Plaintiff is an inmate in the custody of the New York State Department of Corrections ("DOCS"). Plaintiff brings this action against three DOCS employees, alleging that they violated his First and Fourteenth Amendment rights. Defendants moved for summary judgment pursuant to FED. R. Civ. P. 56. This case was referred to the Hon. David R. Homer, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

The Report-Recommendation dated January 18, 2007 recommended that all of Plaintiff's claims against Defendants be dismissed with prejudice as abandoned by Plaintiff except Plaintiff's due process claim against Defendant Gummerson. Further, it was recommended that Defendant's motion for summary judgment be granted as to the due process claim against Defendant Gummerson, that the action be terminated as to all claims

and all Defendants, and that the Defendants' motion for an order deeming the judgment in this action a "strike" under 28 U.S.C. § 1915(g) be granted. Both parties had the option of submitting objections to the report within ten days. Defendants did not file any objections. Plaintiff filed a document describing nine objections to the report and recommendation.

When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in Plaintiff's objections, this Court has determined to adopt the Report-Recommendation of Magistrate Judge David R. Homes for the reasons stated therein.

It is therefore

ORDERED that Plaintiff's claims against all Defendants be DISMISSED with prejudice as abandoned by Plaintiff except the due process claim against Gummerson; Defendants' Motion for Summary Judgment be GRANTED as to the due process claim against Gummerson; and that Defendant's motion for an order deeming the judgment in this action a "strike" under 28 U.S.C. § 1915(g) be GRANTED.

IT IS SO ORDERED.

Dated: February 8, 2007